

CHAPTER 2

BEER¹

SECTION

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8-201. Beer board established. There is hereby established a beer board to be composed of the board of mayor and aldermen. The mayor shall be the chairman of the beer board.

8-202. Meetings of the beer board. All meetings of the beer board shall be open to the public. The board shall hold regular meetings in the city hall at such times as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place.

8-203. Record of beer board proceedings to be kept. The recorder shall make a record of the proceedings of all meetings of the beer board. The

¹Municipal code references

Minors in beer places: § 11-102.

Tax provisions: title 5.

State law reference

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in Watkins v. Naifeh, 635 S.W.2d 104 (1982).

record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board.

8-204. Requirements for beer board quorum and action. The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote.

8-205. Powers and duties of the beer board. The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this city in accordance with the provisions of this chapter.

8-206. "Beer" defined. The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight.

8-207. Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57-5-101(b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00).¹ Said fee shall be in the form of a cashier's check payable to the City of Lexington. Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter.

8-208. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100). Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on January 1, to the City of Lexington, Tennessee. At the time a new permit is issued to any business subject to this

¹State law reference

Tennessee Code Annotated, § 57-5-108(c).

tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

8-209. Beer permits shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for retail sale of beer may be further restricted by the beer board so as to authorize sales only for off premises consumption. A single permit may be issued for on premise and off premise consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board.

8-210. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with hospitals, schools, churches, day cares or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the sale of beer for on premises consumption within five hundred (500) feet of any hospital, school, church, day care or other place of public gathering. The distance shall be measured in a straight line¹ from the nearest point on the property line upon which sits the building from which the beer will be sold for on premises consumption to the nearest point on the property line of the hospital, school, church, day care or other place of public gathering. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a hospital, school, church, day care or other place of public gathering if a valid permit had been issued to any business on that same location as of January 1, 1993, unless beer is not sold for on premises consumption at that location during any continuous six-month period after January 1, 1993. (as amended by Ord. #200212, Oct. 2002)

8-211. Issuance of permits to persons convicted of certain crimes prohibited. No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years or who has been convicted of driving under the influence of an intoxicant, drug or

¹State law reference

See Watkins v. Naifeh, 625 S. W. 2d 104 (Tenn. 1982) and other cases cited therein which establish the straight line method of measurement.

drug producing stimulant; or convicted of public intoxication; or convicted of any crime involving alcohol and/or drugs within the past ten (10) years. No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant shall have been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years or who has been convicted of driving under the influence of an intoxicant, drug or drug producing stimulant; or convicted of public intoxication; or convicted of any crime involving alcohol and/or drugs within the past ten (10) years. (as amended by Ord. #200104, June 2001)

8-212. Prohibited conduct or activities by beer permit holders.

It shall be unlawful for any beer permit holder to:

(1) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

(2) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.

(3) Make or allow any sale of beer between the hours of 12:00 Midnight and 6:00 A.M. during any night of the week; and between 12:01 A.M. Sunday and 1:00 P.M. Sunday, and 6:00 P.M. Sunday to 6:00 A.M. Monday. No beer shall be consumed, or opened for consumption, on or about any premises licensed, in either bottle, glass, or other container, after 12:15 A.M. Tuesday through Sunday nor after 6:15 P.M. on Sunday evening.

(4) Make or allow any sale of beer to a person under twenty-one (21) years of age.

(5) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.

(6) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.

(7) Allow drunk persons to loiter about his premises.

(8) Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content of more than five percent (5%) by weight. (as amended by Ord. #200102, March 2001)

8-213. Suspension and revocation of beer permits. The beer board shall have the power to suspend or revoke any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be suspended or revoked until a public hearing is held by the board after reasonable notice to all the known parties in interest. Suspension or revocation proceedings may be initiated by the police chief or by any member of the beer board.

8-214. Civil penalty in lieu of suspension or revocation. Pursuant to Tennessee Code Annotated, § 57-5-108(a)(2) the board may assess a civil penalty against a permit holder in lieu of suspension or revocation of said permit. Such penalty may be up to one thousand five hundred dollars (\$1,500) for each offense of making or allowing sales to minors and up to one thousand dollars (\$1,000) for any other violation. The permit holder shall have seven (7) days to pay aforementioned penalty before the suspension or revocation takes effect. Payment of the penalty does not effect the permit holders right to seek judicial review of the suspension or revocation pursuant to the general laws of the State of Tennessee.

8-215. Violations. Except as provided in § 8-214, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty clause of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

8-216. Revocation of license. Where a permit or license is revoked, no new license or permit shall be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The board, in its discretion, may determine that issuance of a license or permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the license or any family member who could inherit from such individual under the statute of intestate succession.

8-217. Minors in beer places.¹ (1) Definitions. (a) Minor shall be any person under twenty-one (21) years of age.

(b) Loitering shall mean that a minor may not be allowed in nor stay on the premises of any establishment that sells beer for on premises consumption as hereinafter stated.

(2) No minor shall be allowed to loiter on the premises of any establishment that sells beer for on premises consumption unless such establishment has a gross revenue of seventy percent (70%) of its income derived from the sale of food. (As added by Ord. #200003, March 2000)

¹Municipal code reference

Minors in beer places: § 11-102.